

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)	
)	
v.)	
)	
AEGERION PHARMACEUTICALS, INC.,)	Criminal No. 1:17cr10288
)	
Defendant.)	
)	
)	

**AEGERION’S MOTION TO ORDER A PRESENTENCE REPORT AND TO SET AN
EXPEDITED SCHEDULE FOR A CHANGE OF PLEA AND SENTENCING**

Defendant Aegerion Pharmaceuticals, Inc. (“Aegerion”) respectfully submits this to Motion to (1) order an expedited pre-plea Presentence Report and (2) set an expedited schedule for conducting the Change of Plea and Sentencing Hearing.

ARGUMENT

On November 20, 2017, the Court issued an Order rejecting the guilty plea tendered by Aegerion under Rule 11(c)(1)(C). Since the issuance of the Court’s order, Aegerion and the United States have engaged in negotiations which will result in a Plea Agreement that will be submitted pursuant to Rule 11(c)(1)(B). In light of these negotiations and the deteriorating financial situation at the company, Aegerion respectfully requests that this Court order a pre-plea Presentence Report and set an expedited schedule for conducting a combined change of plea hearing and a sentencing hearing. An expedited schedule is necessary due to Aegerion’s continued financial deterioration, which could jeopardize its ability to continue in operation and pay any criminal fine if this matter is not resolved in very short order.

Aegerion’s financial position has continued to weaken in the weeks since the Court’s rejection of the Amended Plea Agreement [Dkt. #23]. As discussed in Aegerion’s sentencing

memorandum [Dkt. #19], Aegerion depends on revenue from the sales of its two products, Myalept and Juxtapid, and commercial-rate loans from its parent company, Novelion Therapeutics, to fund operations. Additionally, Aegerion has \$325 million in convertible debt that is due in 2019. Aegerion faces a number of near-term financial challenges, and Aegerion and Novelion are simply blocked from accessing the capital markets while this criminal matter and the total amount Aegerion will owe is not known with certainty.

Moreover, Novelion and Aegerion's ability to retain and recruit employees has been severely impacted by the open, unresolved status of the criminal matter and the attendant media coverage of this situation. In addition, the company's efforts to recruit a CEO, a position that has been vacant since early November, have stalled while this criminal case remains unresolved.

Aegerion's financial deterioration seriously jeopardizes its ability to continue to provide treatment for its patients, all of whom have severe, ultra-rare diseases. Aegerion provides approximately 234 patients—roughly 39% of patients on its therapies globally—with medicine at no cost. Aegerion's ability to continue to provide this care is increasingly under doubt. If this were to occur, patients who rely on Juxtapid or Myalept for treatment of their rare and severe diseases will be left with few, if any, other options.

To offset the chance these consequences could occur, Aegerion, with the government's concurrence, respectfully requests that the Court take the following steps.

First, Aegerion requests that the Court order an expedited pre-plea Presentence Report. *See United States v. Gall*, 829 F.3d 64, 70 (1st Cir. 2016) (citing *United States v. Kurkculer*, 918 F.2d 295, 301–02 (1st Cir. 1990); *United States v. Cruz*, 709 F.2d 11, 115 (1st Cir. 1983)) (noting that sentencing courts in the First Circuit can, with defendant's permission, order and review the presentence report before accepting or rejecting a guilty plea); 3 CHARLES ALAN WRIGHT, ET AL.,

FEDERAL PRACTICE AND PROCEDURE § 528 n.6 (4th ed. 2017) (quoting FED. R. CRIM. P. 32(c)(1) advisory committee's note to 1975 amendment) (noting that FED. R. CRIM. P. 32(c)(1) permits pre-plea disclosure of the presentence report to the court, as such disclosure "enables the judge to have all of the information available to him at the time he is called upon to decide whether or not to accept the plea of guilty"). The record before the Court provides a detailed overview of the facts and circumstances that is sufficient to allow the Court to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553. However, a Presentence Report may provide the Court with additional information about Aegerion and how the guidelines apply to these offenses. Waiting to order the Presentence Report until the acceptance of Aegerion's guilty plea will cause unnecessary and very harmful delay to Aegerion, delay that would significantly exacerbate the financial challenges facing Aegerion. Accordingly, Aegerion requests that the Court either order an expedited preparation of a Presentence Report now, or in the alternative find that a Presentence Report is unnecessary in this matter. Aegerion will provide the Probation department with any materials it needs on an accelerated schedule and Aegerion will make company personnel available to Probation rapidly.

Second, Aegerion respectfully requests that the Court set an expedited schedule for accepting Aegerion's guilty plea and conducting the company's sentencing proceeding. Aegerion and the United States anticipate submitting a Plea Agreement in this matter on or before January 5, 2018. Following the submission of the Plea Agreement, Aegerion requests that the Court set the following schedule:

- Submission of the Presentence Report to the Court by January 22, 2018. Aegerion will waive the minimum notice required by Rule 32(e)(2).

- A combined plea and sentencing hearing on January 29, or 30, 2018, or February 2, 2018.
- Submission of any Sentencing Memoranda three days prior to the sentencing proceeding.

WHEREFORE, Aegerion respectfully requests that the Court order a pre-plea Presentence Report and conduct an expedited change of plea and sentencing hearing in this matter.

Dated: December 21, 2017

/s/ Joshua S. Levy
Joshua S. Levy (BBO# 563017)
Patrick J. Welsh (BBO# 672283)
ROPES & GRAY LLP
800 Boylston Street
Boston, MA 02199
Telephone: (617) 951-7000
Facsimile: (617) 951-7050
Email: joshua.levy@ropesgray.com
patrick.welsh@ropesgray.com

*Attorneys for Aegerion Pharmaceuticals,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2017 a true and correct copy of the foregoing document was served electronically through the ECF system on all registered counsel of record as identified on the Notice of Electronic Filing (NEF).

/s/Joshua S. Levy
Joshua S. Levy